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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,142	11/21/2006	Hiromi Takarada	TOR-06-1354	8937

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IP GROUP OF DLA PIPER US LLP
ONE LIBERTY PLACE
1650 MARKET ST, SUITE 4900
PHILADELPHIA, PA 19103

EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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01/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,142	Applicant(s) TAKARADA ET AL.	
	Examiner LYNDA M. SALVATORE	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/20/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 10/14/08 have been fully considered and entered. Claim 4 has been canceled and claims 1-3 and 5-7 have been amended as requested. Applicant's amendments are found sufficient to overcome the 112 2nd paragraph rejections set forth in sections 2-5 of the Office Action dated 7/21/08. As such, these rejections are hereby withdrawn. However, Applicant's amendments are not found sufficient to overcome the prior art rejections previously set forth.

Claim Rejections - 35 USC § 102/103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 5-7 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maurer et al., US 6,207,601.

Applicant argues that the prior art of Maurer et al., does not teach the claimed cellulose acetate proprionate. Applicant further points to the specification to argue that that the fabric is manufactured from a composition comprising 70-95 wt. % cellulose mixed ester and 5-20 wt. % of a water soluble plasticizer. Applicant further argues that Maurer et al., teach a meltblown fabric wherein the fibers are not uniform or discontinuous by breakage. These arguments are not found persuasive.

With regard to the newly added cellulose acetate proprionate, it is respectfully pointed out that Maurer et al., teach that the fabric is made with cellulose acetate (abstract) or more specifically, cellulose acetate proprionate (column 3, 3-7).

With regard to Applicant's argument regarding the composition mixture set forth in the specification, it is respectfully pointed out that Applicant is not claiming such a composition. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., composition mixture) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to Applicant's arguments that Maurer et al., teach a meltblown fabric wherein the filaments are not uniform or discontinuous, it is respectfully pointed out that Maurer et al., teach continuously spinning the fibers. It is the position of the Examiner that such a process would produce continuous type filaments as opposed to staple size filaments (column 5, 38-55). The Examiner could not find any teachings by Maurer et al., to support Applicant's argument that non-uniform or discontinuous fibers are formed.

The patent issued to Maurer et al., teach a melt-blown non-woven comprising a cellulose ester fiber with a mean diameter of less than about 10 microns and a degree of substitution ranging from 1.5-3.0 (abstract). With regard to the claimed plasticizer, Applicant includes a range that includes zero. As such, the Examiner considers such a range to include no amount of plasticizer.

Maurer et al., does not explicitly teach the claimed amount of acyl groups per glucose, however, it would be obvious to one having ordinary skill in the art to optimize the amount of acyl units as a function of desired end use of the cellulose ester. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Maurer et al., does not teach the claimed glass transition temperature, strength or CV properties, however, it is reasonable to presume that said properties are inherent to the melt-blown non-woven of Maurer et al. Support for said presumption is found in the use of like materials such as a cellulose ester fiber and the use of like processes such as forming a non-woven, which would result in the claimed glass transition temperature, strength and CV properties. Applicant is invited to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed glass transition temperature, strength and CV properties would obviously have been present once the melt-blown non-woven of Maurer et al., is provided. *In re Best*, 195 UPSQ 433

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYND A M. SALVATORE whose telephone number is (571)272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 5th, 2009
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/Lynda Salvatore/
Primary Examiner